

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREEM LATIFI,

Plaintiff,

v.

JIM COOPER, et al.,

Defendants.

No. 2: 23-cv-0665 KJN P

ORDER

Plaintiff is a county prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

1 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
25 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.
27 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
28 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as

1 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
 2 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
 3 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are Sacramento County Sheriff Cooper, Sacramento County
 5 Medical, the Rio Consumnes Correctional Center (“RCCC”) and Sacramento County. Plaintiff
 6 alleges that defendant Sacramento County has been unable to give plaintiff vital surgery, putting
 7 plaintiff’s life in danger. Plaintiff also alleges that defendant Sacramento County has been unable
 8 to provide plaintiff with religious accommodations for plaintiff’s religious diet and religious
 9 practices for Ramadan.

10 An agency or department of a municipal entity is not a proper defendant under Section
 11 1983. Vance v. Cnty. of Santa Clara, 928 F.Supp. 993, 996 (N.D. Cal. 1996). Rather, the county
 12 itself is the proper defendant. Id. Accordingly, defendants Sacramento County Medical and
 13 RCCC are dismissed as improperly named defendants.

14 Turning to plaintiff’s claims against defendant Sacramento County, “[a] municipality
 15 cannot be held liable solely because it employs a tortfeasor-or, in other words, a municipality
 16 cannot be held liable under § 1983 on a respondeat superior theory.” Monell v. Dep’t of Soc.
 17 Servs., 436 U.S. 658, 691(1978). Therefore, counties and municipalities may be sued under §
 18 1983 only upon a showing that an official policy or custom caused the constitutional tort. Id. at
 19 691.

20 “In order to state a claim under Monell, a party must: (1) identify the challenged policy or
 21 custom; (2) explain how the policy or custom is deficient; (3) explain how the policy or custom
 22 caused the plaintiff harm; and (4) reflect how the policy or custom amounted to deliberate
 23 indifference, i.e. show how the deficiency involved was obvious and the constitutional injury was
 24 likely to occur.” Harvey v. City of S. Lake Tahoe, 2012 WL 1232420, at *3 (E.D. Cal. Apr. 12,
 25 2012) (citing Young v. City of Visalia, 687 F. Supp. 2d 1141, 1148 (E.D. Cal. 2009). “In other
 26 words, a plaintiff must plead (1) that the plaintiff ‘possessed a constitutional right of which [he or
 27 she] was deprived; (2) that the municipality had a policy; (3) that this policy amounts to
 28 deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is the moving

1 force behind the constitutional violation.” Bradley v. County of San Joaquin, 2018 WL
 2 4026996, at *9 (E.D. Cal. Aug. 23, 2018) (quoting Plumeau v. Sch. Dist. No. 40 Cnty. of
 3 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997)).

4 Plaintiff does not allege that he was denied surgery or religious accommodations pursuant
 5 to a policy of Sacramento County. For this reason, plaintiff’s claims against defendant
 6 Sacramento County are dismissed. If plaintiff names Sacramento County as a defendant in an
 7 amended complaint, plaintiff shall address the legal standards set forth above.

8 Turning to plaintiff’s claims against defendant Cooper, the Civil Rights Act under which
 9 this action was filed provides as follows:

10 Every person who, under color of [state law] . . . subjects, or causes
 11 to be subjected, any citizen of the United States . . . to the deprivation
 12 of any rights, privileges, or immunities secured by the Constitution .
 . . shall be liable to the party injured in an action at law, suit in equity,
 or other proper proceeding for redress.

13 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
 14 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
 15 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
 16 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
 17 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
 18 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
 19 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative
 20 act, participates in another’s affirmative acts or omits to perform an act which he is legally
 21 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588
 22 F.2d 740, 743 (9th Cir. 1978).

23 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
 24 their employees under a theory of respondeat superior and, therefore, when a named defendant
 25 holds a supervisory position, the causal link between him and the claimed constitutional
 26 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
 27 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
 28 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.

1 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
2 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
3 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
4 participation is insufficient).

5 Plaintiff does not allege defendant Cooper's involvement in the alleged deprivations.
6 Plaintiff does not allege, for example, that defendant Cooper denied his request for surgery and/or
7 religious accommodations. Plaintiff also fails to describe the surgery he needs. Plaintiff also fails
8 to describe the special diet and the specific accommodations for Ramadan he was denied.
9 Without this information, the undersigned cannot determine whether plaintiff states a potentially
10 colorable claim against defendant Cooper. Accordingly, the claims against defendant Cooper are
11 dismissed.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
13 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,
14 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
15 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
16 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
17 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
18 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
19 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
20 268 (9th Cir. 1982).

21 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
22 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading. This requirement exists
24 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
25 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
26 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
27 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
28 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim

1 and the involvement of each defendant must be sufficiently alleged.

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

4 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
5 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
6 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
7 Sacramento County Sheriff filed concurrently herewith.

8 3. Plaintiff's complaint is dismissed.

9 4. Within thirty days from the date of this order, plaintiff shall complete the attached
10 Notice of Amendment and submit the following documents to the court:


11 a. The completed Notice of Amendment; and

12 b. An original of the Amended Complaint.

13 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
14 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
15 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

16 Failure to file an amended complaint in accordance with this order may result in the
17 dismissal of this action.

18 Dated: April 26, 2023

19 
20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____

Amended Complaint

Plaintiff